

173-425 OPEN BURNING

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

173-425-035	Episodes. [Order DE 77-19, § 173-425-035, filed 10/24/77. Formerly WAC 18-12-035.] Repealed by 89-02-055 (Order 88-39), filed 1/3/89. Statutory Authority: Chapters 70.94 and 43.21A RCW.
173-425-036	Curtailement during episodes or impaired air quality. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-036, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-036, filed 1/3/89.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.
173-425-045	Prohibited materials. [Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-045, filed 1/3/89; Order DE 77-19, § 173-425-045, filed 10/24/77. Formerly WAC 18-12-045.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.
173-425-055	Exceptions. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-055, filed 9/17/90, effective 10/18/90; Order DE 77-19, § 173-425-055, filed 10/24/77. Formerly WAC 18-12-055.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.
173-425-065	Residential open burning. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-065, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-065, filed 1/3/89; Order DE 77-19, § 173-425-065, filed 10/24/77. Formerly WAC 18-12-065.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.
173-425-075	Commercial open burning. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-075, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-075, filed 1/3/89; Order DE 77-19, § 173-425-075, filed 10/24/77. Formerly WAC 173-425-075.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.
173-425-085	Agricultural open burning. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-085, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-085, filed 1/3/89; Order DE 77-19, § 173-425-085, filed 10/24/77. Formerly WAC 18-12-085.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.
173-425-095	No burn area designation. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-095, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-095, filed 1/3/89; Order DE 77-19, § 173-425-095, filed 10/24/77. Formerly WAC 18-12-095.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.
173-425-115	Land clearing projects. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-115, filed 9/17/90, effective 10/18/90; Order DE 77-19, § 173-425-115, filed 10/24/77. Formerly WAC 18-12-115.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.
173-425-120	Department of natural resources--Smoke management plan. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-120, filed 9/17/90, effective 10/18/90; Order DE 77-19, § 173-425-120, filed 10/24/77. Formerly WAC 18-12-120.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.
173-425-130	Notice of violation. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-130, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-130, filed 1/3/89; Order DE 77-19, § 173-425-130, filed 10/24/77. Formerly WAC 18-12-130.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.
173-425-140	Remedies. [Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-140, filed 9/17/90, effective 10/18/90; Order DE 77-19, § 173-425-140, filed 10/24/77. Formerly WAC 18-12-140.] Repealed by 92-24-077 (Order 91-57), filed 12/1/92, effective 1/1/93. Statutory Authority: Chapter 70.94 RCW.

173-425-010 PURPOSE.

This chapter promulgated under chapter 70.94 RCW, the Washington Clean Air Act, authorizes the department of ecology to implement the provisions of that act. This rule establishes controls for open burning in the state in order to:

- (1) Reduce open burning to the greatest extent practical by eliminating it in:
 - (a) Areas that exceed ambient air quality standards for PM-10 and/or carbon monoxide; and
 - (b) Urban growth areas or cities with a population of 10,000 or more by December 31, 2000;
- (2) For areas where open burning is allowed, establish a limited burning program, including procedures by which open burning may be conducted;
- (3) Encourage the development and use of alternate methods of debris disposal.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-010, filed 12/1/92, effective 1/1/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-010, filed 9/17/90, effective 10/18/90; Order DE 77-19, § 173-425-010, filed 10/24/77. Formerly WAC 18-12-010.]

173-425-020 APPLICABILITY.

- (1) No outdoor burning shall occur during a declared period of impaired air quality.
- (2) Except as described in subsection (1) of this section and WAC 173-425-050, this chapter applies to all forms of outdoor burning in the state except:
 - (a) Silvicultural burning (governed by chapter 332-24 WAC).
 - (b) Agricultural burning (governed by chapter 173-430 WAC).
 - (c) Recreational fires as defined in WAC 173-425-030(12).
 - (d) Ceremonial fires as defined in WAC 173-425-030(2).
 - (e) Burning to improve and maintain fire dependent ecosystems (pursuant to chapter 332-24 WAC).
- (3) A local air authority, fire protection authority, county, or conservation district may enforce its own controls that are stricter than those set forth in this chapter.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-020, filed 12/1/92, effective 1/1/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-020, filed 9/17/90, effective 10/18/90; Order DE 77-19, § 173-425-020, filed 10/24/77. Formerly WAC 18-12-020.]

173-425-030 DEFINITIONS.

The definitions of terms contained in chapter 173-400 WAC are incorporated by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter shall have the following meanings:

- (1) "Agricultural burning" means burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW 70.94.650 or other authoritative source on agricultural practices.
- (2) "Ceremonial fire" means a fire associated with a Native American ceremony or ritual.
- (3) "Department" means department of ecology.
- (4) "Episode" means a period when a forecast, alert, warning, or emergency air pollution stage is declared, as stated in chapter 173-435 WAC.
- (5) "Impaired air quality" means a condition declared by the department or a local air authority in accordance with the following criteria:
 - (a) Meteorological conditions are conducive to an accumulation of air contamination concurrent with:
 - (i) Particulate that is ten micron and smaller in diameter (PM-10) at or above an ambient level of seventy-five micrograms per cubic meter measured on a twenty-four-hour average; or
 - (ii) Carbon monoxide at an ambient level of eight parts of contaminant per million parts of air by volume (ppm) measured on an eight-hour average.
 - (b) Air quality that threatens to exceed other limits established by the department or a local air authority.
- (6) "Local air authority" means an air pollution control authority activated pursuant to chapter 70.94 RCW that has jurisdiction over the subject source.
- (7) "Nonattainment area" means a clearly delineated geographic area which has been designated by the Environmental Protection Agency and promulgated as exceeding a national ambient air quality standard or standards for one or more of the criteria pollutants, which includes carbon monoxide, fine particulate matter (PM-10), sulfur dioxide, ozone, and nitrogen dioxide.
- (8) "Nuisance" means an emission of smoke or other emissions from any open fire that unreasonably interferes with the use and enjoyment of the property deposited on.
- (9) "Open burning" means all forms of outdoor burning except those listed as exempt in WAC 173-425-020.

- (10) "Outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion.
- (11) "Reasonable alternatives" means disposal alternatives to open burning that cost less than eight dollars fifty cents per cubic yard. After July 1993, this amount shall be adjusted periodically by department policy.
- (12) "Recreational fire" means barbecues and campfires, using charcoal, natural gas, propane, or natural wood which occur in designated areas or on private property. Fires used for debris disposal purposes are not considered recreational fires.
- (13) "Silvicultural burning" means burning on any land the department of natural resources protects per RCW 70.94.030(13), 70.94.660, 70.94.690, and pursuant to chapter 76.04 RCW.
- (14) "Urban growth area" means an area defined by RCW 36.70A.030.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-030, filed 12/1/92, effective 1/1/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-030, filed 9/17/90, effective 10/18/90. Statutory Authority: Chapters 70.94 and 43.21A RCW. 89-02-055 (Order 88-39), § 173-425-030, filed 1/3/89; Order DE 77-19, § 173-425-030, filed 10/24/77. Formerly WAC 18-12-030.]

173-425-040 PROHIBITED MATERIALS.

- (1) Except as provided in WAC 173-425-020(2), the following materials shall not be burned in any outdoor fire: Garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction debris, metal or any substance (other than natural vegetation) which when burned releases toxic emissions, dense smoke, or odors.
- (2) Prohibited materials may be burned in certain circumstances:
 - (a) Diseased animals and infested material. When ordered by a duly authorized health officer and authorized by the department or local air authority, diseased animals and other infested material may be burned, as required, to keep the infestation from spreading.
 - (b) Dangerous material. When ordered by a fire protection authority and when authorized by the department or local air authority, fires to dispose of materials presenting a danger to life, property, or public welfare may be burned, if no approved practical alternate method of disposal is available.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-040, filed 12/1/92, effective 1/1/93.]

173-425-050 CURTAILMENT DURING EPISODES OR IMPAIRED AIR QUALITY.

- (1) No outdoor fire shall be ignited:
 - (a) Whenever the department declares an air pollution episode for the geographical area pursuant to chapter 173-435 WAC; or
 - (b) Whenever the department or a local air authority declares impaired air quality for the geographical area.
- (2) A person responsible for an outdoor fire at the time an episode or impaired air quality is declared shall extinguish that fire. Outdoor burning conducted under the auspices of the department of natural resources for the purpose of burning forest slash pursuant to RCW 70.94.660 through 70.94.670 shall be extinguished by withholding new fuel and allowing the fire to burn down.
- (3) Smoke visible from all types of outdoor burning, except silvicultural burning, after a time period of three hours has elapsed from the time of declaration of the episode or impaired air quality shall constitute prima facie evidence of unlawful outdoor burning.
- (4) For department of natural resource silvicultural burning, smoke visible from outdoor burning after a time period of ten hours has elapsed from the time of declaration of the episode or impaired air quality shall constitute prima facie evidence of unlawful outdoor burning.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-050, filed 12/1/92, effective 1/1/93.]

173-425-060 OPEN BURNING PROGRAM FOR THE STATE.

- (1) General requirements:
 - (a) All burning requires a permit as covered in WAC 173-425-070.
 - (b) Permits shall not be issued, and thus open burning is not allowed, in areas where reasonable alternatives are available. Within ninety days of the effective date, the department shall develop uniform procedures for determining costs of alternatives to open burning.
 - (c) A fire protection authority may declare a fire hazard in areas where burning is banned and in areas where burning is allowed. If open burning is determined the most appropriate manner to abate the fire hazard, the request must be reviewed and permitted by the local air authority. Permits issued under this section shall provide that:
 - (i) Prohibited material shall not be burned in any fire;
 - (ii) No open burning shall be done during a declared period of impaired air quality;

- (iii) No reasonable alternative is available.
 - (d) No open burning shall be allowed in areas that exceed federal or state ambient air quality standards. Such areas shall be defined as carbon monoxide and/or PM-10 nonattainment area, unless otherwise determined pursuant to subsection (2)(a) of this section.
- (2) Additional requirements for nonattainment areas.
- (a) Phase-out approach. A local air authority may petition the department to use a phase-out approach in portions of a federally designated nonattainment area for carbon monoxide and/or PM-10. The phase-out approach will focus on how to achieve the Washington Clean Air Act goals and eliminate burning in areas that exceed the standards. The department will review and determine if the petition should be approved. The department may partially approve petitions or approve petitions with conditions based on consideration of the following factors:
 - (i) Population and population density.
 - (ii) The ability of the air quality in the region to support open burning based upon geographical and meteorological conditions.
 - (iii) The presence of a permitting program.
 - (iv) The extent to which reasonable alternatives to open burning are being developed through solid waste management plans and the schedule for the availability of such reasonable alternatives.
 - (v) Other factors deemed appropriate by the local air authorities.
 - (b) Petition evaluation. The petition to use a phase-out approach is due to the department no later than one month after the effective date of this rule. A ban is not effective in areas identified in the petition until after the department makes a ruling on the petition. Upon receiving the petition, the department shall review and make a determination within thirty days. For all federally designated nonattainment areas, open burning shall be banned by the applicable attainment date.
 - (c) Permits. The department or local air authority may issue permits in banned areas for the following activities:
 - (i) Fire fighting instruction. Local air authorities or the department may issue permits for fire training fires, pursuant to guidelines and rules of the department of ecology.
 - (ii) Specific forms. The department or the local air authorities may permit, with conditions, fires set that are part of a defined research project, weed abatement, and smoke training as part of a military training exercise.

- (d) Responding to open burning calls. Each affected county shall identify a fire marshal or other appropriate county official for field response and to document open burning complaints or violations using appropriate field notices. In areas where the county has no jurisdiction, the department or the local air authorities will negotiate with the appropriate local agency on field response.
- (3) Additional requirements for urban growth areas and cities with a population of ten thousand or more.
 - (a) Open burning will be banned when reasonable alternatives are available, no later than the end of the year 2,000.
 - (b) Until open burning is banned, it is allowed subject to the permitting provisions of this chapter.
 - (c) When open burning is banned, the provisions in subsection (2) of this section apply.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-060, filed 12/1/92, effective 1/1/93.]

173-425-070 OPEN BURNING PERMIT REQUIREMENTS.

- (1) Permit program. For areas where burning is allowed, the department, local air authorities, fire protection authorities, conservation districts, or counties may issue permits. Those issuing permits are responsible for field response to open burning complaints. Within ninety days of the effective date, the department shall develop minimum standards for a field response program, which addresses training, staffing, funding, and any other elements deemed appropriate by the department.
- (2) Permit program development and assistance.
 - (a) The department shall provide assistance for implementing a permitting program, including minimum standards which address training, staffing, funding, and any other elements deemed appropriate by the department.
 - (b) The department shall develop a model permit program and provide guidance on starting and implementing permit programs.
 - (c) In selecting a permit program, the options range from the minimum - a general rule burn, as described in subsection (5) of this section - to a written permit. A permit program must be in place eight months after the department issues guidelines. If at that time no agreement is reached, the area becomes a no-burn area and falls under the restrictions of WAC 173-425-060(2). The department will conduct a joint public hearing with the conservation districts, local air authorities, counties, and fire districts. The purpose of the hearing is to inform the public that no agreement has been reached.

- (d) The department or the local air authorities shall coordinate with the agencies listed in subsection (1) of this section to determine the type of permitting program appropriate for the area.
- (3) Fees. The department or the local air authority may charge a fee to cover the administrative cost of a permit program. Fire districts, counties, and conservation districts issuing open burning permits may collect a fee to cover administrative costs. (RCW 70.94.780)
- (4) Additional restrictions. The local air authorities and the department may restrict conditions for burning under this section. Burning conditions may include, but are not limited to, restricting burning in sensitive areas per chapter 173-440 WAC, restricting the time period for burning, restricting permissible hours of burning, imposing requirements for good combustion practice, and restricting burning to specified weather conditions.
- (5) General rule burn permits. For areas of the state where burning is allowed, agencies listed in subsection (1) of this section may use a general permit by rule. This section provides a minimum (general rule burn) permit. Persons not able to meet all of the requirements of (a) through (i) of this subsection must apply for and receive a written permit. General rule burn permits under this section may be used for the following number of days per year: 1992-1995 - twenty-one days/year; 1995-1998 - fourteen days/year; 1998-2000 - seven days/year; after 2000 -seven days/year. Failure to comply with all the requirements of (a) through (i) of this subsection voids the general rule burn permit and the person burning is subject to the penalty provisions of WAC 173-425-100. A person burning under this section must follow these requirements and any additional restrictions, including those established by cities, counties, or fire protection authorities:
 - (a) The fire must not include prohibited materials listed in WAC 173-425-040, except what paper is necessary to start the fire.
 - (b) A person capable of extinguishing the fire must attend it at all times and the fire must be extinguished before leaving it.
 - (c) No fires are to be within fifty feet of structures.
 - (d) The pile must not be larger than four feet by four feet by three feet.
 - (e) Only one pile at a time may be burned, and each pile must be extinguished before lighting another.
 - (f) No outdoor fire is permitted in or within five hundred feet of forest slash without a written burning permit.
 - (g) Either the designated permitting authority must be called to confirm burning conditions for each day or current information on burning conditions must be obtained from another designated source.
 - (h) If the fire creates a nuisance, it must be extinguished.

- (i) Permission from a landowner, or owner's designated representative, must be obtained before starting an open fire.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-070, filed 12/1/92, effective 1/1/93.]

173-425-080 VIOLATIONS.

- (1) The local air authority or department may issue a notice of violation to the person responsible for the fire under any of the following:
 - (a) Conditions of a permit issued under this chapter are violated;
 - (b) Any open fire is ignited where, under this chapter, such fires are prohibited or where a permit is required and has not been obtained;
 - (c) Prohibited materials are burned in an open fire;
 - (d) Any open fire is ignited when a condition of impaired air quality or air pollution episode stage is declared;
 - (e) Any ignited open fire that is not extinguished when a condition of impaired air quality or air pollution episode is declared;
 - (f) The fire causes emissions detrimental to health;
 - (g) The fire causes emissions that unreasonably interfere with property use and enjoyment.
- (2) A fire protection authority called to respond to, control, or extinguish an illegal or out-of-control fire may charge and recover from the person responsible for the fire the costs of its response and control action.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-080, filed 12/1/92, effective 1/1/93.]

173-425-090 LOCAL AIR AUTHORITY MAY ISSUE VARIANCE.

Local air authorities may adopt variance procedures in their rules. Variance procedures properly adopted comply with this regulation and satisfy the requirement of department review required by RCW 70.94.181. The department, at its discretion, may review variance petitions.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-090, filed 12/1/92, effective 1/1/93.]

173-425-100 PENALTIES.

Any violation of this chapter may be subject to any penalty or other remedy authorized in chapter 70.94 RCW.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-100, filed 12/1/92, effective 1/1/93. Statutory Authority: RCW 70.94.331. 90-19-062 (Order 90-10), § 173-425-100, filed 9/17/90, effective 10/18/90; Order DE 77-19, § 173-425-100, filed 10/24/77. Formerly WAC 18-12-100.]

173-425-110 SEVERABILITY.

The provisions of this regulation are severable. If any provision is held invalid, the application of such provision to other circumstances and the remainder of the regulation shall not be affected.

[Statutory Authority: Chapter 70.94 RCW. 92-24-077 (Order 91-57), § 173-425-110, filed 12/1/92, effective 1/1/93.]